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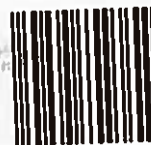
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March 18, 2020

Via Certified Mail - Return Receipt Requested

Managing Agent
Ardagh Glass, Inc.
5801 E Marginal Way S
Seattle, WA 98134

Managing Agent
Ardagh Glass, Inc.
PO Box 50487
Indianapolis, IN 46250

Re: **SUPPLEMENTAL NOTICE OF INTENT TO SUE UNDER THE CLEAN
WATER ACT**

Dear Managing Agent:

We represent Puget Soundkeeper Alliance (“Soundkeeper”), 130 Nickerson St. #107, Seattle, WA 98109, (206) 297-7002 and Waste Action Project, P.O. Box 9281, Covington, WA 98042, (206) 849-5927. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter supplements Soundkeeper and Waste Action Project’s Notice of Intent to Sue Under the Clean Water Act and Request for Copy of Stormwater Pollution Prevention Plan sent December 18, 2019, and is to provide you with sixty days’ notice of Soundkeeper’s and Waste Action Project’s intent to file a citizen suit against Ardagh Glass, Inc. (“Ardagh”) under section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, for the violations described below.

Ardagh was granted authorization to discharge in accordance with the effluent limitations and other requirements and conditions set forth under the King County Industrial Waste Program Major Discharge Authorization numbers 555-004, effective February 13, 2012 and expired February 12, 2017, and authorization number 555-05, effective February 13, 2017 and expiring February 12, 2022 (“Authorization”), and other requirements and conditions outlined in King County Code 28.84.060. The conditions and discharge standards in the Authorization are predicated on federal, state, county, and other applicable regulations and requirements. King County Code 28.84.060(J)(1).

Ardagh has violated and continues to violate the CWA (see Sections 301 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317) and the terms and conditions of the wastewater authorization with respect to operations of, and discharges of wastewater from, its facility located at or about 5801 E Marginal Way S, Seattle, WA 98134 (the “facility”) to King

County's sewer system, the West Point Treatment Plant, and waters of the state. The facility subject to this notice includes any contiguous or adjacent properties owned or operated by Ardagh.

I. VIOLATIONS OF GENERAL DISCHARGE LIMITATIONS

Dischargers subject to federal categorical discharge limits are subject to whichever is most restrictive, either those limits or county local discharge limits. Discharge standards and limitations are established to comply with current NPDES requirements and to protect sewerage facilities, treatment processes, public health and safety of the receiving waters, air quality, and biosolids quality. King County Code 28.24.060(D)(1). Ardagh is required to comply with local discharge limits. *See* King County Code 28.24.060(F). Limitation exceedances under the Authorization or King County code or federal or state pretreatment standards are violations. King County Code 28.84.060(N)(1)(a).

The Authorization limits the discharge of nonpolar fats, oils, and grease to 100 mg/L, calculated from the arithmetic mean of the concentration of three grab samples, taken no more frequently than at five minute intervals, or when the results of a composite sample exceed the limitation. Ardagh has violated and continues to violate this limitation, including on the dates listed in Table 1 below:

Table 1: Sample Site No. A40746 Fats, Oil, and Grease Discharge Limitation	
Date sample was collected	Fats, oil, and grease (Limit 100 mg/L)
April 20, 2016	116.67
August 22, 2016	110
September 17, 2018	153.33
June 13, 2019	166.7

II. UNAUTHORIZED DISCHARGES

A. Unauthorized Excessive Flow

The Authorization grants Ardagh permission to discharge a daily maximum of 50,000 gallons and a monthly average daily discharge of 25,000 gallons of industrial wastewater. This permission is granted in accordance with the effluent limitations and monitoring requirements set forth in the Authorization. Authorization, pg. 2. Ardagh has violated and continues to violate these limitations.

Ardagh has and continues to violate the maximum daily discharge volume (measured in gallons) on days known to Ardagh, including on the dates listed in Table 2 below:

Table 2: Sample Site No. A40746 Maximum Daily Discharge Volume

Date sample was collected	Maximum daily discharge volume (Limit 50,000 gallons)
November 13, 2015	53,540
March 31, 2016	51,430
June 13, 2016	53,690
February 9, 2017	54,110
October 8, 2017	104,500
March 3, 2019	99,630
September 17, 2019	88,980
December 20, 2019	63,910

Ardagh has and continues to the maximum of 25,000 gallons of monthly average daily discharge volume, including for the following months listed in Table 3 below:

Table 3: Sample Site No. A40746 Monthly Discharge Volume

Month sample was collected	Total monthly flow	Monthly average daily discharge volume (Limit 25,000 gallons)
March 2016	784,030	25,291.29
September 2019	1,103,560	36,785.33

B. Failure to obtain authorization for discharge.

Ardagh discharges wastewater in violation of the Clean Water Act because it failed to apply for authorization at least 30 days before beginning discharge. Applications to discharge must be submitted at least 30 days in advance, with content specified in King County Code. King County Code 28.84.060(J)(1)(a), (J)(4). Industrial users wishing to renew authorization must file for permit renewal at least 90 days prior to the expiration date of a current authorization. Authorization 555-004, General Condition H, King County Code 28.84.060(J)(7). Failure to do so is discharging without an authorization. Authorization 555-004, General Condition H, King County Code 28.84.060(J)(7). Ardagh began discharging without an authorization on February 13, 2017, as noted by an email from King County to Ardagh on October 4, 2016, and continues to do so, each and every day.

Alternatively, Ardagh violated the Clean Water Act by failing to timely file for transfer of permit coverage. A waste discharge permit may not be transferred without notifying King County at least 30 days in advance and the Director's approval, with the notification including specific information. King County Code 28.84.060(J)(10). Ardagh failed to comply with this requirement when it began operating in 2014 but did not file for transfer of permit coverage until January 12, 2017.

III. VIOLATIONS OF BEST MANAGEMENT PRACTICE REQUIREMENTS

Ardagh has violated and continues to violate best management practice ("BMP") requirements. King County is authorized to require Ardagh to comply with AKART and BMP

requirements. King County Code 28.24.060(J)(5)(d). BMPs are discharge limitations. King County Code 28.24.060(F)(1)(establishing BMPs as limitations); (5)(b)(the county must issue authorizations with conditions that may include best management practices); (N)(1)(d)(BMP violations are authorization violations). Ardagh's repeated limitation violations evince Ardagh's failure to comply with BMP requirements.

IV. VIOLATIONS OF RECORDKEEPING REQUIREMENTS

Ardagh is in violation of the Authorization because it has failed to maintain records relating to discharges as required. Ardagh is required to maintain records related to routine maintenance, documentation associated with best management practices, waste disposal dates, manifests and disposal records for accumulated wastes, self-monitoring reports, analytical lab results, dates and times of sample collection and batch discharges, pH and equipment calibration log books, pH monitoring records and flow records, for a minimum of three years. Ardagh has failed to do so, including failing to retain documentation associated with best management practices and analytical lab results, in violation of the Authorization. King County Code 28.84.060(K)(12).

V. VIOLATIONS OF REPORTING REQUIREMENTS

Ardagh is in violation of reporting requirements because it has failed and continues to fail to submit test results for TSS. Industrial users must submit samples of industrial waste discharges or perform tests and report the test results on a routine and continuing bases when required by regulation, requested by state or local government, or deemed necessary by King County. (K)(3). Sampling for TSS is required by federal regulation. 40 CFR 426.82. Further, all sampling data must be submitted to King County. King County Code 28.84.060(K)(4). Failure to comply with reporting requirements is an authorization violation. *Id.* at (N)(1)(c).

VI. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Soundkeeper and Waste Action Project. These violations are ongoing. Soundkeeper and Waste Action Project intend to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

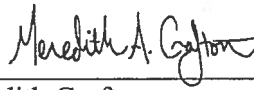
Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation that occurred through November 2, 2015, and \$55,800 per day for each violation that occurred thereafter. In addition to civil penalties, Soundkeeper and Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Soundkeeper and Waste Action Project believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice

period, or shortly thereafter, to file a citizen suit against Ardagh under Section 505(a) of the Clean Water Act for violations.

Sincerely,

SMITH & LOWNEY, P.L.L.C.

By: 
Meredith Crafton
Richard Smith

cc: Andrew Wheeler, Administrator, U.S. EPA
Chris Hladick, Region 10 Administrator, U.S. EPA
Laura Watson, Director, Washington Department of Ecology
C T Corporation System, Registered Agent (711 Capitol Way S STE 204, Olympia,
WA 98501)